In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 219

WILLIE JACKSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (R. 137–139; Pet. App. 1a–2a) is reported at 352 F. 2d 490. The opinion of the district court (R. 121–127) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on November 16, 1965 (R. 141; Pet. App. 3a), and a petition for rehearing was denied on May 11, 1966 (R. 143–147; Pet. App. 4a). The petition for a writ of certiorari was filed on June 10, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

224-440—66

QUESTION PRESENTED

Whether the seizure of liquor from petitioner's car was lawful.

STATUTES INVOLVED

GEORGIA CODE ANNOTATED, SECTION 27–207:

> *Arrest without warrant.* An arrest for a crime may be made by an officer, either under a warrant, or without a warrant if the offense is committed in his presence, or the offender is endeavoring to escape, or for other cause there is likely to be a failure of justice for want of an officer to issue a warrant.

GEORGIA CODE ANNOTATED, SECTION 68–1707:

> *Marking of official vehicles.* Any motor vehicle which is used on official business by any person authorized to make arrests for traffic violations in this State, or any municipality or county thereof, shall be distinctly marked on each side and the back with the name of the agency responsible therefor, in letters not less than six inches in height. (Acts 1953, Nov. Sess., pp. 556, 605).

GEORGIA CODE ANNOTATED, SECTION 92A–9907:

> *Operation of motor vehicle while license suspended or canceled.* In the event any learner, special learner, operator or chauffeur shall have his license suspended, canceled, or revoked, after being granted, it shall be a misdemeanor punishable as provided by law for such person to operate a motor vehicle upon the public roads or highways within this State, or upon any public street within the limits of an incorporated village, town or city. (Acts 1937, pp. 322,

348; 1951, pp. 598, 603; 1957, p. 457; 1961, pp. 446, 447.)

STATEMENT

In a jury-waived trial (R. 15–16, 95) in the United States District Court for the Middle District of Georgia petitioner was found guilty on two counts of an indictment charging illegal transportation and possession of non-tax-paid whiskey, in violation of 26 U.S.C. 5205(a)(2) and 5604(a) (R. 1–2, 127), and was given concurrent sentences of imprisonment for 18 months on each count (R. 127–128). On appeal (R. 128–130), the conviction was affirmed (R. 141). A motion to suppress evidence seized after petitioner's arrest was denied both after the pre-trial hearing (R. 93) and at the close of the trial (R. 127).

The evidence showed that two city detectives from the vice squad of Macon, Georgia were driving an unmarked police car on patrol on the morning of November 3, 1963 (R. 17, 21–22, 67–68). These officers knew of petitioner's reputation as the head of an illegal whiskey operation and had received reports from a reliable informer that he was using his red and white Ford in such operations (R. 19–21, 23–24, 68–69). The officers also knew that petitioner's driver's license had been suspended for a year (R. 32, 92, 103)—they had been in recorder's court on June 5, 1963, when the suspension had been ordered (R. 32, 103).

On the morning in question (November 3, 1963) the officers saw a man, whom they believed to be petitioner driving his Ford, approaching them in the opposite direction (R. 28–30, 70). When he made a right turn on

Edgewood Avenue and sped up the hill (R. 31), the officers followed, intending that, if the driver was petitioner, they would arrest him for driving without a license (R. 32). Later in the chase, in which the cars reached a speed as high as 70 miles per hour, the officers positively identified petitioner as the driver (R. 57, 75, 105, 114–115). At one point petitioner made a left turn and dropped a cardboard case of whiskey in fruit jars out of the right door. The officers could smell the whiskey after the jars broke on the pavement (R. 42–45, 66, 79–81). Petitioner finally drove the Ford into a field where his car stopped before a pile of concrete blocks. He ran about 15 feet but stopped when the officers called to him (R. 47–48, 60, 84). Petitioner was arrested for driving without a license and was placed in the officers' car (R. 55, 102, 107, 113). The officers then seized 11 gallons of non-tax-paid whiskey in two cases lying on the back floorboard of the Ford (R. 48–49, 65–66, 100–101). This whiskey was admitted in evidence over defense objection (R. 127).

ARGUMENT

The seizure of the whiskey from the back floorboard of petitioner's car was justified in the circumstances of this case, since, at the time of the seizure, the officers had reason to believe that there was contraband in the car. They had information from a reliable informer that petitioner was using his red and white Ford for hauling illegal whiskey, and when they saw petitioner throw a case of whiskey out of his car and could smell liquor from the broken jars as

they drove by, the officers had ample probable cause to believe that petitioner had illegal liquor in the car. This in itself justified the search of the car and the seizure of the whiskey. *Brinegar* v. *United States,* 338 U.S. 160; *Carroll* v. *United States,* 267 U.S. 132.

These decisions teach that contraband may be seized from a vehicle without an accompanying arrest. Hence, no issue is presented here of whether a search of a vehicle is a permissible incident to an arrest for driving without a license. Indeed, the arrest of petitioner for that offense [1] was quite distinct from the seizure at issue here. The fact that the officers saw petitioner driving in apparent violation of Georgia law was a legitimate ground for following him, but it was petitioner's conduct in speeding up his car and throwing out the liquor, together with the other information that the officers had, which justified the search and seizure.

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[1] We note parenthetically that petitioner's arrest was clearly valid, since the officers knew that petitioner's license had been suspended for a year. When they saw him driving on November 3, they knew he was committing in their presence a violation of Section 92A–9907 of the Georgia Code (*supra*, p. 2), and that they had power to arrest him under Section 27–207. There is nothing in the statutes cited by petitioner which required the officers to ascertain that petitioner's license had not been reinstated before they could make the arrest, and petitioner makes no claim that the license actually had been reinstated. Nor is there anything in Section 68–1707 of the Gorgia Code (*supra,* p. 2) to indicate that the legislature intended that the absence of markings on official vehicles "shall render inadmissible in the trial of a criminal case evidence otherwise lawfully acquired" (see R. 126–127).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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